

IN THE UNITED STATES DISTRICT COURT  
OF THE WESTERN DISTRICT OF PENNSYLVANIA

CRYSTAL BYRD and BRIAN BYRD,  
individually and on behalf of  
all similarly situated persons,  
Plaintiffs

v.

AARON'S, INC.; ASPEN WAY  
ENTERPRISES, INC.; JOHN DOES  
(1-100) AARON'S FRANCHISEES;  
DESIGNERWARE, LLC,  
Defendants

CA No. 11 - 101

Testimony of TIMOTHY KELLY in the above-captioned  
matter held on Tuesday, May 24, 2011, commencing at  
2:59 p.m., before the Honorable Susan Paradise Baxter,  
at the Federal Courthouse, 17 South Park Row, Erie,  
Pennsylvania.

Reported by Sondra A. Black  
Ferguson & Holdnack Reporting, Inc.

EXHIBIT

A

1 PC Rental Agent?

2 A. Roughly somewhere around about -- about five, six  
3 years ago.

4 Q. And has your son, Ashton, worked with you the entire  
5 time?

6 A. Since he got out of college, yes.

7 Q. And when did that happen, sir?

8 A. Roughly, I think, around four years ago.

9 Q. What position does he hold?

10 A. He's in charge of tech support.

11 Q. Okay.

12 A. He does tech support and sales.

13 Q. Now, obviously, you know the focus of today's  
14 hearing is PC Rental Agent, correct?

15 A. Correct.

16 Q. Let's talk about that for a little bit. Describe  
17 for us, generally, what PC Rental Agent is.

18 A. Well, PC Rental Agent is a software package that  
19 rental stores install on their computers to do basically  
20 three things. It helps -- it helps the store get the  
21 computer rent ready so between rentals they have a simple  
22 method to restore and wipe the system clean. So, therefore,  
23 PC Rental Agent makes sure that Customer A doesn't get  
24 Customer B's data during the rental. That's what's called  
25 the F3 hot key recovery function.

1           The other functionality of PC Rental Agent is to --  
2           is a kill switch. Basically when the customer doesn't pay  
3           for the computer, their rent is behind, they can lock down  
4           the computer until the customer makes arrangements to pay  
5           for it.

6           The third thing PC Rental Agent does is help the  
7           customer -- or helps the franchisee improve their sales  
8           because it helps -- it loads some software packages on the  
9           computer that helps the franchisee improve their sales. For  
10          example, it loads a free antivirus software package, it  
11          installs an open office package, it removes trial software  
12          that the rental customer would find unuseful.

13          So it helps the franchisee in three areas: Getting  
14          the computer rent ready, it cuts down labor; it kills with a  
15          kill switch, shuts off the computer if the customer is late;  
16          and helps the franchisee improve their sales. So these  
17          three basic factors is what you would want if you were using  
18          the product.

19          Q. Now, as currently configured, it also has another  
20          program called the detective program, correct?

21          A. No. I wouldn't say that. I would -- what it has is  
22          the ability to install -- or build, install, and activate a  
23          separate standalone program that could be used to monitor  
24          that computer.

25          Q. Okay. And that's the portion of the program that

1 the company should designate one person and that person is a  
2 loss prevention person to operate the detective mode?

3 A. Actually, it's referred to as the master  
4 accountholder.

5 Q. So the master accountholder is the person who is the  
6 person who is given the ability to download or to acquire  
7 the detective mode, correct?

8 A. Correct.

9 Q. So nowhere in any of these documents is there -- is  
10 there reference to the loss prevention person; is there?

11 A. That's correct.

12 Q. Okay. So now, getting back to the PC Rental Agent.  
13 It's been around for, I think you said, five, six years now?

14 A. About five, six years.

15 Q. Has it changed over time?

16 A. We change it all the time.

17 Q. Has the server changed over time?

18 A. Server probably definitely changed.

19 Q. So this program -- in fact, I've read some  
20 literature that it originally started out as hardware that  
21 was soldered to the motherboard at one point; is that  
22 correct?

23 A. That is absolutely incorrect.

24 Q. Well, if you would turn to Exhibit No. 8, and I  
25 believe that this is -- this is a Q and A that's taken from

1 your website, and Question No. 1 says, "How do I remove the  
2 agent?" And it says, "The agent is soldered to the  
3 motherboard and it is part of the intel chip set.

4 Therefore, it cannot be uninstalled." Do you see that, sir?

5 A. Yes, sir.

6 Q. May be me, and I may have misunderstood what it  
7 meant -- looks like you're itching to explain it to me, so  
8 please do.

9 A. This is a tongue and cheek document that we wrote.  
10 My business partner and my son said nobody in their right  
11 mind would ever read this and believe that's how the  
12 software works.

13 Q. I'm not in my right mind.

14 A. Obviously they were wrong. This document is made  
15 available on our website if you are searching for how to  
16 defeat the software. So if you're trying to defeat the  
17 software, we give you this misinformation. It's based off  
18 of the Apollo Gemini missions in the Apollo 13 movie. Or if  
19 a customer calls and says, I want to remove this software,  
20 this is the documentation. Or if competitors try to figure  
21 out how the software works, that's what that's for.

22 Q. Then let's step back for a minute, sir. Because I  
23 think this is an important point. Over time, since this  
24 product was originally marketed, it has been changed by your  
25 company and it has evolved until what it is today?

1       A.    Again, you -- you keep inferring that we change it  
2       or manipulate it or do something.  The server in Erie just  
3       relays the e-mail to the owner of the computer.

4       Q.    Right.  But it doesn't leave my computer as an  
5       e-mail?

6       A.    I've never thought of it that way.  I'm not sure  
7       what -- that's really a Microsoft question.  You have to  
8       look at how all those protocols work.

9       Q.    Okay.  We'll --

10      A.    For me, as a developer of the software, it is an  
11      e-mail.

12      Q.    We'll have some testimony about that, sir.  Let's  
13      move on here.  But the point is, if I'm doing the search and  
14      I decide I want to go fly fishing or I want to pay my Macy's  
15      bill or I want to do something bad, you know, in the privacy  
16      of my own home and I want to access a website that you  
17      probably don't want other people to see, or if I want to do  
18      anything on that website, you're taking a picture of that  
19      time, it goes to Erie and it goes back to the store,  
20      correct?

21      A.    When it's in Erie, it doesn't live in a state.  It's  
22      in a transmittal state.  So it's improper to mislead the  
23      Court and say that the data is sitting here and being  
24      warehoused.  It just relays off the e-mail server to the  
25      owner of the computer.